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THE POCKET VETO PARADOX: WEAPONIZING ARTICLE 200 AGAINST STATE AUTONOMY

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ABSTRACT

The notion of a pocket veto, when a constitutional head virtually kills a bill by refusing to do so, is not new to comparative legislative procedures, especially on the national scale. The Indian Constitution, under Article 200, allows a state Governor, when a state legislature passes a bill, three express choices, including: assent, without assent (return the bill to the legislature), or retain the bill to the consideration of the President. The Constitution however does not stipulate a time limit thus leaving a possible loophole where Governors may delay indefinitely and thus obstruct legislative intent effectively implementing what has been characterized as a pocket veto. This move has huge consequences in the state autonomy and federalism because the inaction of a Governor over a long period of time can hinder the legislative will of an already elected state government and transform the position of the Governor into a de facto power centre. In a recent case, the Supreme Court of India made it clear that such non-action is unconstitutional: the meaning of as soon as possible in Article 200 is an obligatory requirement to act, and a failure to take one of the three courses of action stipulated is equivalent to the legal impediment to the legislative process.

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KEYWORDS: Governor's Assent to State Legislation, Article 200 (Constitution of India), Pocket Veto, Federalism and State Autonomy, Judicial Review of Gubernatorial Discretion.

INTRODUCTION

The Indian Constitution perceives a balanced relationship both between the Union and the States, the springboard of which is federalism, democratic responsibility and collaborative governance. In this context, the office of the Governor stands in a completely distinct and frequently argued out position.² Although the Governor was constitutionally to be the nominal head of the State, upon whom the elected Council of Ministers was to have acted largely on the advice and with the assistance of the Council of Ministers, he has come to occupy a centre of constitutional controversy.³ It is especially apparent in the exercise or non-exercise of the powers under Article 200 of the Constitution that address the grant of assent to Bills passed by State Legislatures.

Article 200 provides the Governor the power to either approve, disapprove, send a non-money bill back to be considered or reserve a bill to be considered by the President. The text of the provision is procedurally neutral but the practical use of the same has created a lot of constitutional tension. The lack of stipulated period within which the Governor is required to act has made it possible to give rise to what is currently known as the pocket veto a scenario where the Governor not only does not give his approval to a bill, but also makes it impossible to even vote on it at all.⁴ This experience has created very grave doubts about the loss of legislative independence,

² Dr. L. V. K. Prasad, *Role of Governors under the Indian Constitution: The Emerging Issues*, 13 *Int'l J. Creative Rsch. Thoughts* 224 (2025)

³ Ibid

⁴ M. Sreeram & M. Unnikrishnan, *The Role of the Governor in Indian Federalism*, 9 *Int'l J. Legal Studies & Indus. L. (IJLSI)*(2022)

the perversion of federal balance and the politicisation of a constitutionally neutral office. The office of the Governor as proposed under Part VI of the Constitution was never to serve as a substitute political power parallel to the elected government of the State. The Governor was to serve as a monitor for unbiased and smooth conduct of relationship between the centre and the states.⁵ The Governor serves the constitutional purpose of the head of the State and is expected to perform their functions subject to the assistance and counsel of the Council of Ministers, except in relation to strictly specified areas of discretion, which is why he was not designed by the framers as an agent of the Union Government.⁶

Nonetheless, as now practiced, there has been a rise in the mismatch between constitutional theory and political reality. In a number of cases throughout Indian States Governors have refused to assent to or have postponed assent to important legislation such as legislation relating to higher education, administration restructuring and social welfare legislation.⁷ These delays have practically served to cripple the intent of the legislature, casting doubts on the basic questions of the legitimacy of democracy and the balance of power among the federal government. The growing appeal to discretionary authority without apparent justification has reconfigured the Article 200 as the means of procedure protection into a powerful political mechanism.⁸

The disagreement on the exercise of assent powers is made even worse by the absence of specific constitutional guidelines regarding cues. Article 200 does not specify a limit on the timeframe in which the Governor must take action as other contributions

⁵ Supra 1

⁶ Supra 4

⁷ Dr. Seema Sharma & Dr. Pankaj Tyagi, *Role of the Governor in India: A Critical Analysis*, 6 *Int'l J. Human. & Soc. Sci.: Insights & Transformations* 62 (2021)

⁸ Ibid

towards the constitution stipulate in their procedures.⁹ Some have viewed this silence as granting broad discretion and some have suggested that this discretion should be applied in the context of constitutional morality and democratic responsibility.

The involvement of the courts in this matter has been restraint but more assertive. Courts have repeatedly confirmed that the Governor is subject to the assistance and counsel of the Council of Ministers, with the exception of only strictly delimited exceptional cases. The judicial decisions have highlighted that constitutional powers cannot be practiced at their own will and under extraneous political reasons. However, the judicial system has in the past avoided dictating definite deadlines, thus leaving unaddressed the main problem of procrastination. Such judicial restraint despite its compliance with the separation of powers has also led to the existence of ambiguity regarding Article 200.

Such constitutional uncertainty has more than institutional conflict. The stalling and eventual in acting of duly enacted legislation is a detract of democratic will, interference in good governance and erosion of public confidence in the constitutional processes. The legislative powers of state legislatures, even though democratically elected, are virtually delegated to an unelected constitutional figure with a constitutional role to play. This poses real questions about the dissolution of federal autonomy and the restructuring of the Governor office as an operation of central regulation as opposed to constitutional balancing.

The so-called phenomenon of the pocket veto acquires vital importance in this case. The Indian version is conceptually borrowed in terms of its comparative constitutional system but in quite a different constitutional setting and has no formal recognition but generates actual legal effects. The Indian framework places a lot of faith on

⁹ Supra 1

constitutional conventions and good faith as opposed to the jurisdictions where the executive powers of veto are necessarily and strictly time-limited. The undermining of these traditionality's has revealed the weakness in the constitutional architecture.

OBJECTIVES OF THE STUDY

- To discuss the constitutional provision of the authorities of the Governor in Article 200 of the Constitution of India.
- To examine the history and use of the "pocket veto in the Indian constitution.
- To assess the impact of delayed or withheld assent on State autonomy and legislative functioning.
- To consider the judicial interpretations of the discretionary powers of the Governor.

This paper aims to discuss the changing position of the Governor in Article 200, especially its abuse of the powers of assent and its effect on the State sovereignty.

The study will evaluate the extent to which the current system is sufficient in maintaining the spirit of federalism that was envisaged by the Constitution by examining the clauses of the Constitution, judicial rulings, and academic discussion.

CONSTITUTIONAL FRAMEWORK GOVERNING THE GOVERNOR'S ASSENT UNDER ARTICLE 200

The constitutional architecture of India establishes the Governor as the nominal executive head of the State, entrusted with responsibilities that are both symbolic and functional. Part VI of the Constitution gives the structure in which the Governor functions especially in the legislative functions. Among them, Article 200 takes a leading position since it regulates the process of assenting to the Bills passed by the State Legislature. This provision may appear to be procedural, but it is deeply

constitutional in nature, because it has a direct impact on the operations of representative democracy on the State level.

In the case of a Bill presented to the Governor, after being made by the State Legislature, Article 200 gives that the Governor may either assent to it, withhold assent, or subject it to reconsideration (in case not a Money Bill), or place it in the custody of the President. The provision, however, makes a notably silent observation on the time slot within which such decision needs to be made. It is this silence that has become the centre of constitutional debate, as it allows one to delay the legislative process without necessarily saying it or dissenting to it.¹⁰ The constitutional position of the Governor should be perceived together with Article 163 that specifies that the Governor shall act upon the advice and the council of ministers with an exception that there are instances where the Constitution clearly grants discretionary powers. Under judicial interpretation, it has always been stressed that the Governor is not a political power but a constitutional court officer and the authority of discretion is strictly limited. It has been made clear by the Supreme Court that the powers of the Governor are not individualistic but institutional, which are expected to be applied in co-existence with the democratic will of the State Legislature.¹¹

Although this is the clarity of doctrine, the operation of the office has on many occasions gone out of the constitutional theory. The recommendations of academic commentators emphasize that the functions of the Governor have long been changing, especially in a scenario where the State government is composed of a different Party than the one in power in the Centre. Such a change has significant repercussions concerning the concept of federalism since it changes the power dynamics between

¹⁰ Bhanu Pratap Parashar & Anushka Daipuria, *Constitutional Morality and the Office of Governor: An Analysis through Recent Disputes between States and Governor*, **J. Contemp. L. & Soc'y** (2022)

¹¹ Ibid

the Union and the States. The discretion of Article 200 when considered alone seems procedural. But in the case where it is performed beyond time, it obtains substantive consequences. The authority to suspend legislative will at any length of time, can effectively be exercised by a Governor who is in charge of withholding assent that does not necessitate any communication of reasons. This lack of action is not only a way of postponing the act of governance but also a way of tampering with the constitutional requirement of the elected legislature and derailing the principle of responsible government.¹²

It has been pointed out severally by scholars that the framers of the Constitution did not have plans to grant Governors unlimited powers over legislation. The office was established to be a constitutional watchdog, but not political watchdog. The lack of a definite time constraint was based on the premise of constitutional morality and cooperative federalism and not anticipation of strategic inaction. The fading away of these norms has revealed a structural weakness in the constitutional structure. The constitutional aspect of the federal is further complicated by the fact that Bills are solely to be considered by the President.¹³ Although constitutionally valid, a frequent or unreasonable use of this power in effect transfers the control of the legislature of the State into the hands of the Union. This tendency complicates the independence of State legislatures and casts grave doubts upon the power distribution as envisaged in the federal model. In combination with long-term inaction on the gubernatorial level, it is a twofold system of executive control which water-thins the autonomy of the State.¹⁴

¹² Sarumathi V., *To Retain or Not to Retain: An Analysis of the Constitutional Provisions and Implications of the Governor's Power to Reserve Bills in India*, 4 **Indian J. Integrated Rsch. L.** 273 (2023).

¹³ Ibid

¹⁴ Ibid

Thus, Article 200 operates at the intersection of constitutional text, political practice, and institutional convention. Its modern use indicates an ever-expanding disparity between ideals in the constitution and administrative reality. To gauge the changing role of the Governor of this construct, it is important to understand the transformations that have taken place in his position since it was a ceremonial constitutional position to one that can affect the legislative outcomes.

THE EVOLUTION OF THE POCKET VETO AND ITS IMPACT ON INDIAN FEDERALISM

The notion of a pocket veto in the Indian constitutional framework is a remarkable divergence of the conventional ideas of the consent of the legislation. Though not formally codified in the Constitution, the practice has developed by executive inaction, in which the Governor neither approves nor vetoes a Bill by the State Legislature. This has become one of the most controversial areas of Centre State relations in modern constitutional parlance. Unlike jurisdictions where veto powers are expressly codified and procedurally regulated, the Indian Constitution leaves the issue of timing under Article 200 conspicuously unaddressed.¹⁵ The result of this legislative silence has been the creation of a de facto veto system where Governors can refuse to give consent indefinitely without giving reasons and without there being any institutional costs. The consequence is a kind of constitutional paralysis, which weakens the legislative system without any direct responsibility.

This practice cannot be developed outside the changing political context. It has been noted by scholars that the growing politicisation of the office of Governor has turned what was meant to be a dispassionate constitutional office, to a political tool of

¹⁵ Balaram Das, *Discretionary Power of the Governor in Indian States: A Constitutional Analysis*, 5 *Int'l J. Human. Soc. Sci. & Mgmt.* 708 (2025).

influence. It is especially clear in the States that are led by political parties other than the ruling party at the Centre where the length of delay in assent has been correlated with more widespread political contestation. Courts have been reluctant in their responses to this phenomenon. Although courts have continually reiterated that the Governor should exercise the aid and the advice of the Council of Ministers, they had not put temporal restrictions on the ability of the Governor to exercise gubernatorial discretion. Cases such as *Shamsher Singh v. State of Punjab* emphasizes the point that the Governor is not an independent body, but the lack of strict schedules has hampered the judiciary in preventing inaction¹⁶

The consequences of the practice go beyond procedural anomalies. The long-term denial of consent is something that derails governance, stalls policy execution, and destroys the trust people have on democratic institutions. It is actually a way in which an unelected body of power can override the democratic will of the electorate, and this is cause of great concern on the issues of democratic legitimacy and accountability. At the federal level, these practices undermine the sovereignty of States and the balance that is the Constitution envisaged. In addition, the absence of transparency on matters regarding decisions to withhold assent adds to the issue. The pocket veto works in silence unlike formal vetoes which require direct communication. Such lack of accountability not only leads to loss of trust, but also denies the legislature and the people at large any meaningful chance to question or even act on the decision.

The history of the pocket veto is therefore indicative of some underlying constitutional problem: the conflict between the form and practice of law. Although the Constitution offers a principle based on teamwork and respect, the success may be predicted in the following way; it has to be followed by the constant observance of the constitutional

¹⁶ *ibid*

morality. Without such compliance even good intentions can be twisted to partisan purposes.¹⁷ To overcome this dilemma, judicial intervention is not enough. As long as the pocket veto is still being used, the fundamental principles of federalism and representative democracy upon which the Constitution is based will continue being compromised.

JUDICIAL REVIEW AND LIMITS ON GUBERNATORIAL DISCRETION: THE CASE OF THE STATE OF TAMIL NADU

The working of Article 200 of Constitution has become a very important fault line in the Indian Federation especially where the authority to withhold or bestow assent on State laws has been deployed to defuse or frustrate the democratic will of popular legislatures. *State of Tamil Nadu v Governor of Tamil Nadu* is an example of how constitutional silence, dealing with timelines, was abused to form a de facto so-called pocket veto, allowing the State to remain idle to effectively destroy the powers of the legislature in a State.¹⁸

The Tamil Nadu Legislature approved a total of twelve Bills between January 2020 and April 2023 and sent these bills to the Governor to be assented to. These Bills were left pending by the Governor almost two years. The Governor also never returned to the legislature to reconsider the ten Bills with which the Governor had withheld assent until the State applied to the Supreme Court, when the Governor withheld assent. The legislature then re-publication of the Bills followed without any material changes, but the Governor was left to wait until Presidential action should be taken on the support and recommendation of the Council of Ministers. The process of these occurrences led

¹⁷ Supra 11

¹⁸ Verma, Pranav, Guardrails for Discretionary Powers: A Case Comment on *The State of Tamil Nadu v. The Governor of Tamil Nadu and Another*, 19 Nat'l L. Sch. J. 1 (2025).

to a long-term stalemate in lawmaking that caused severe constitutional issues about the abuse of gubernatorial discretion.

The Supreme Court boldly ruled out the notion that Article 200 allows a pocket veto. Indian Constitution is based on the Westminster model, where Governors are merely a nominal figure subject to constitutional conventions and ministerial advice, unlike the United States Constitution which specifically acknowledges the existence of such a mechanism. The Court determined that the authority to refuse assent does not involve the authority to continue to delay a ruling indefinitely.¹⁹ A Governor should select one of the constitutionally approved alternatives, which include assent, withholding assent with a reconsideration or reservation to the President and cannot be a passive man.

The Court also made it clear that when a Governor refuses to assent, the first proviso to Article 200 comes into play, and it is now obligated to resend the Bill to the legislature as early as possible with a message to reconsider. Inaction in the long term is therefore unconstitutional. In addition, the re-enactment of a Bill with no significant alterations by the legislature prohibits the Governor to deny its assent or send it to the President. The unconstitutionality of such re-passage of Bills, as claimed in the case in point, was considered to be in the indirect veto of the intent of the legislature.

The meaningful thing about the judgment is that it applied the principles of the administrative law to the governance and presidential authority. The Court considered the powers in Articles 200 and 201 to be administrative in nature and as such, they were open to judicial review. It once again established that high constitutional office did not bring free discretion. The decision should be made on the basis of pertinent considerations, adherence to natural justice and the decision should

¹⁹ *ibid*

not be of mala fides. The necessity of rational decision-making was also highly stressed. Where a Governor reserves a Bill or refuses assent, it must have clear and precise reasons, stating the constitutional basis of the act. General or politically oriented explanations were not considered enough. This requirement increases transparency and allows the judicial review to be meaningful and prevents the abuse of power.

The Court also made it clear that Governors have very limited discretionary action. The discretion is only in the cases that are specifically mentioned in the Constitution, like in the second proviso of Article 200 about Bills that can threaten the status of the High Court. Even where this is the case, the Governor should find certain provisions and show how they give the proviso the attraction. Bills being reserved on either basis of political difference or personal dissatisfaction was strictly banned. Article 201 placed parallel restrictions on the President. The Court believed that the President too, does not have a pocket veto but he has to give or not to give his consent within a reasonable period. Objections have to be provided in case of refusal of consent, and long-term omission is liable to court scrutiny. In cases where Bills are being reserved due to patent unconstitutionality, the Court suggested the President to consult advisory opinion of the Supreme Court in accordance with Article 143 so as to have the case being neutral and legally clear.

In order to avoid indefinite delays reoccurring, the Court ordered outer limits on the exercise of the assent-related powers both by Governors and the President. Such timelines were argued to be reasonable protections against executive inaction and as objective criteria of judicial scrutiny. The Court made it clear that such limits are not strict directives but guidelines; the reasonable delays can be justified, and the violations of timeframes do not necessarily lead to the conclusion of the assent in any situation. In the given instance, however, the Court held that the actions of the Governor amounted to the absence of bona fides, the ignorance of the constitutional

conventions, and the disobedience towards the established precedent. It therefore applied its extraordinary powers by invoking Article 142 and said that the ten Bills which were re-sent had been assented to on the date of their re-presentation to the Governor. This was a remedy to the gravity of the constitutional violation and made the legislative powers of the State operational again.

The case draws attention to the fact that misuse of Article 200 may destroy federalism by letting the unelected officials to block elected legislature by inaction instead of active disapproval. By rejecting the pocket veto doctrine, applying the protections of the administrative law and setting deadlines, the Supreme Court restated the idea of constitutional discretion being limited to the boundaries of democratic accountability.

NEED FOR REFORMS AND THE WAY FORWARD

The incessant constitutional battles of the application of gubernatorial powers under Article 200 have demonstrated structural flaws within the federal India. Although the Constitution envisions the Governor as a constitutional neutral authority, the real-life experience has proven that lack of procedural safeguards has made the discretionary powers to be abused. The historical wrangles between elected State governments and Governors suggest the dire necessity of institutional change to bring constitutional balance, transparency and democratization of governance.

Among the greatest weaknesses of the current framework is a lack of a time constraint whereby the Governor has to respond to a Bill put before him to be assented to. This gap in legislation has made it easier to create the so-called pocket veto whereby Governors can keep on withholding legislation endlessly without giving reasons or responsibility. This is a practice that takes away the powers of the State legislatures and weakens the principle of representative democracy. A time limit that is constitutionally guaranteed such as the one prescribed by the other presidential approval laws in other constitutional democracies would be a good measure to controlling executive paralysis.

The other reform that is critical is the codification of the constitutional conventions that apply to the exercise of the gubernatorial discretion. Although conventions had been used to provide direction on the behaviour of constitutional authorities, their non-binding character has left them useless when there has been a political conflict. These conventions would be codified by making them a parliamentary statute or would be interpreted and enforced by the committee of judicial authorities. This codification might detail the restricted cases where a Governor might fail to assent or is to keep a Bill and require the reasons why they have done so to be recorded.

Court control is also crucial in maintaining constitutional balance. Although courts have long been restraining in their actions on the executive discretion, the growing abuse of the gubernatorial powers in the country demands a more proactive court action. Courts need not make policy decisions, but can make sure that constitutional powers are within the confines of legality, rationality, and good faith. Acknowledgment in the case law of unreasonable delay as a justiciable issue would be a huge leap towards constitutional stagnation prevention. Moreover, the principles of cooperative federalism should be strengthened with the help of institutional mechanisms promoting dialogue as opposed to confrontation between the Union and the States. Periodic consultative forums of Governors, Chief Ministers and constitutional authorities can also be used as forums of solution to disputes before they develop into constitutional crisis. These would facilitate respect and constitutional values within each other.

Constitutional morality plays an important role in this regard. The constitutional governance as stressed time and again by the Supreme Court is not only maintained by the rules but also by following the spirit of the Constitution. Governors, being lofty constitutional officers have an increased obligation to restrain, act impartially, and be loyal to democratic ideals. Their degradation of these values undermine the trust of the population and decreases the validity of constitutional institutions. Comparable

constitutional experience is also a valuable input. In various federal systems, the executive assent may have a time limit or can be overridden by a legislature so that no legislature can in any way prevent the legislative process. This might be achieved by following the same protection in the Indian constitutional system, which would increase transparency and accountability without undermining federal independence. After all, the problem of misusing gubernatorial discretion is not only institutional, but also ethical. It can only be handled by having a mixture of law reform, judicial vigilance, and political maturity. Through fortification of constitutional customs, the boundaries of discretion, and reenactment of the concepts of federalism, India is able to make the office of the Governor a stabilizing force as opposed to a source of constitutional friction

CONCLUSION

Article 200 of the Constitution of India provokes a deeper confrontation between constitutional design and the political practice as the constitutional issues that are covered by the Articles in the Code of the Constitution of India. Even though the framers had conceived the Governor to be a dispassionate constitutional figure who operated mostly on the counsel and support of the elected Council of Ministers, modern times have grossly changed the way in which this office functions. The growing dependence on procrastination and inactivity in the issuance of assent to State law has changed a procedural authority into a system that can destroy democratic government. The solution of the so-called pocket veto is therefore a grave constitutional travesty, which has far-reaching consequences of federalism and State sovereignty.

This study paper has shown that Article 200 though being procedural in nature, has a substantive constitutional implication. Such a lack of a definite time in which the governor should act was based upon the belief of constitutional morality and cooperative federalism and not upon the hope of strategic obstruction. In cases where

the assent is indefinitely refused with no explanation, the powers of the legislature of democratically elected assemblies in the States are in effect suspended by an unelected constitutional implementer. That is an outcome that is inherently inconsistent with the values of representative democracy and responsible government that the constitutional system entails.

The resolution of the Supreme Court in the State of Tamil Nadu v Governor of Tamil Nadu is a clear judicial reaction to this constitutional stalemate. The Court restored its belief in the necessity of constitutional discretion leading to a determination by rejecting the ability of a pocket veto in the Article 200, and found it unacceptable that such discretion can be exercised through continuing inaction. The ruling aptly describes the role of the Governor assent as that of an administrative kind and is liable to judicial scrutiny on a clearly founded basis of its appropriateness in terms of relevance of considerations, compliance with the natural justice and the lack of mala fides. By so doing, the Court eliminated the perception that the office of high constitutional office puts the exercise of power not subject to any legal scrutiny.

One of the most important contributions of the judgment is that it focuses on the importance of making decisions through reason. The Court has added transparency to a process that previously had been under constitutional obscurity by making Governors give clear and detailed explanations when they withhold assent, or hold bills pending Presidential review. This necessity enhances the democratic accountability of legislatures and courts in that they can examine whether the constitutional powers were used in support of acceptable constitutional goals or on the basis of some other political reasons not directly related to the purpose of the checks and balances in the constitution. The clarification that the re-passed Bills cannot be held back to be considered by the President unless modified in material terms further averts indirect effect of veto of the legislative intent.

Timeline prescriptions in the exercise of the assent-related powers, despite being controversial, arise out of the ruling as a constitutional defense. These timelines do not serve to result in judicial overreach, but rather serve as a guide to judicial review so that State governments are not left helpless to infeasible executive procrastination. The appeal made in the Tamil Nadu case using Article 142 points out the weight of the violation and shows how serious the Court was in ensuring that the democratic operation was restored where the constitutional dynamics were rendered useless.

On a bigger scale, the phenomenon of the pocket veto underlines the harmful nature of politicisation of the constitutional offices. The prevalent trend of slowing the assent in the States that are controlled by other political parties other than the one in the Centre is a major concern that can be used to discuss the loss of cooperative federalism. The fragile Indian federalism is disrupted when Governors are looked at as tools of central political influence instead of being seen as the impartial constitutional watchdog. These practices not only weaken the autonomy of the State, but also destroy confidence of people in constitutional institutions.

Finally, the success of Indian federalism lies on both the faithfulness and performance of constitutional roles and not their strategic manipulations. The Governor office should not be a place of political rivalry but should operate as a constitutional liaison between the Union and the States. Through solving the pocket veto paradox, this piece of research work sheds more light on the need to reconcile constitutional practice with constitutional purpose. The ruling in *State of Tamil Nadu v Governor of Tamil Nadu* is an important reiteration that in a constitutional democracy executive silence must not be allowed to trump the general will of the people.

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